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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

TERRY F. ZDUN, et al.,

Plaintiffs,

Civil No. 06-6072-TC

v.

FINDINGS AND
RECOMMENDATION

PAULA HENDERSON, et al.,

Defendants.

COFFIN, Magistrate Judge.

On March 31, 2006, plaintiffs filed a "Petition to Quash Summons" against defendant Internal Revenue Agent Paula Henderson and two Doe defendants "as individuals." On July 28, 2006, plaintiffs filed an amended petition, a "demand for bill of particulars, request for injunction and claim for personal damages." (#3)

On October 2, 2006, the United States, as real party in interest, filed a Motion to Dismiss Complaint and/or for Summary Denial of Relief (#4).

Plaintiffs did not file a response or request an extension of time in which to do so, and by Order (#11) entered November 7, 2006, plaintiffs were allowed 30 days to show cause in writing why the unopposed motion (#4) should not be allowed. Plaintiffs were advised that failure to show cause as ordered by the court would result in the dismissal of this action for failure to prosecute.

Plaintiffs did not respond to the court's order to show cause within 30 days or request an extension of time in which to respond. Therefore, a Findings and Recommendation (#13) was entered on December 12, 2006, recommending that pursuant to the court's Order (#11) this action should be dismissed for failure to prosecute.

On December 12, 2006, plaintiffs filed a "Showing of Cause why Defendants' Unopposed Motion Should Not be Allowed" (#12). In an abundance of deference to plaintiffs' pro se status, the Findings and Recommendation (#13) was withdrawn in order for the court to consider plaintiffs' arguments. However, nothing in plaintiffs' brief changes the court's

findings and conclusions set forth in the Findings and Recommendation (#13).

United States' Motion to Dismiss (#4) and exhibits thereto establish that the United States is the proper party-defendant. Plaintiffs' arguments that Revenue Agent Henderson is not an employee of the United States because the "IRS is not an agency of the United States," and that the Internal Revenue Code is not "positive law" are frivolous.

Plaintiffs' petition/complaint to quash IRS summonses directed to Revenue Agent Henderson should be denied.¹

The United States' motion and exhibits establish that plaintiffs' other claims and requests for relief should be denied for lack of subject matter jurisdiction and failure to state a claim.

Accordingly, the Motion to Dismiss (#4) should be allowed and this action should be dismissed with prejudice.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice

¹Plaintiffs filed a similar petition with respect to summonses issued in connection with their 2001-2002 tax years. See, Civ. No. 6:05-CV-6210-HO. By Order (#20) entered March 23, 2006, the court held that plaintiffs had no personal recourse against Ms. Henderson and dismissed plaintiffs' petition(s) for lack of jurisdiction.

of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have ten days from the date of service of a copy of this recommendation within which to file specific written objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issue and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

DATED this 29 day of January, 2007.



Thomas M. Coffin
United States Magistrate Judge